86-299

Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

O. LLOYD HUTCHISON, PETITIONER

v.

JAMES S. THOMAS, ET AL.*, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether the First Amendment or any other principle of law precludes civil court jurisdiction of an ousted United Methodist minister's complaint claiming that he was deprived of his ministry by fraud, collusion and defamation.

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*The other parties to this case not included in the caption are respondents Merlin D. Vining, Thomas L. Cromwell, Richard L. Burns, the East Ohio Conference of the United Methodist Church, the Board of Ordained Ministry of the East Ohio Conference of the United Methodist Church, and the Judicial Council of the United Methodist Church.

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JAMES S. THOMAS, ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Arthur S. Leb, of Amerman, Burt & Jones Co., L.P.A., on behalf of the Rev. O. Lloyd Hutchison, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, infra, 1a - 9a) is reported at 789 F.2d 392. The memorandum opinion of the district court (App. C, infra, 21a - 29a) is not reported.

JURISDICTION

The judgment of the court of appeals (App. B, infra, 19a) was entered on April 28, 1986. On July 18, 1986, Associate Justice Sandra D. O'Connor extended the time within which to file a petition for writ of certiorari to August 26, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment of the United States Constitution provides in relevant part:

> Congress shall make no law respecting an establishment

of religion, or prohibiting
the free exercise thereof; . . .

STATEMENT OF THE CASE

On September 13, 1984, the petitioner, a citizen of West Virginia, filed a complaint against respondents in the United States District Court for the Northern District of Ohio, Eastern Division. He invoked the court's diversity jurisdiction pursuant to 28 U.S.C. 1332(A). The individual respondents are officers of the East Ohio Conference of the United Methodist Church. Bishop James S. Thomas is the chief executive officer of the Conference. Merlin D. Vining, Thomas L. Cromwell, and Richard L. Burns held subordinate Conference offices. The remaining respondents are entities of the United Methodist Church (the Church): The East Ohio Conference of the United Methodist Church (the Conference) is a geographic

jurisdictional entity; the Board of Ordained Ministry of the East Ohio Conference (Board of Ordained Ministry) is a quasi-judicial convocation of ministers under the aegis of the Conference; and the Judicial Council of the United Methodist Church (Judicial Council) is that Church's supreme judicial body.

In the United Methodist Church ministers are itinerant - they move from congregation to congregation at the pleasure of the bishop, with the approval of a committee of congregants known as the pastor-parish relations committee. Each parish has its own pastor-parish relations committee. As a result of fraudulent conduct by the individual respondents, and at the Bishop's request, the Board of Ordained Ministry voted in 1981 that petitioner be involuntarily retired from his status as a minister. It declared him to be "unappointable" - in short, that no

congregation would have him. The Conference affirmed petitioner's involuntary retirement in 1981 and 1982 by votes in open session. In 1982 the respondent Bishop Thomas affirmed petitioner's involuntary retirement. In 1983 the Judicial Council entered a formal decision affirming Bishop Thomas' ruling and holding that all respondent bodies had acted in accordance with church law.

Petitioner's pleadings before the district court in essence charged the individual respondents with falsification of certain records, especially those concerning petitioner's reception by certain pastor-parish relations committees that interviewed petitioner as a potential pastor. The falsification of the records of these meetings created a false picture of the petitioner's ministry, which was placed by the

respondent officers of the Conference before the Board of Ordained Ministry, the Conference itself in open sessions, and the Judicial Council. The pleadings allege that the proceedings of all respondent bodies of the Church were thus tainted with fraud, collusion and defamation.

That fraud and those tortious acts wrongfully induced the respondent church bodies to rely on a false characterization of petitioner's ministry. Moreover, petitioner has specifically alleged that no religious precept has any bearing on this case.

The district court granted respondents' motion to dismiss for lack of subject matter jurisdiction, holding that "civil courts are barred by the First Amendment from determining ecclesiastical questions" (App. C, infra, 23a), and

relying on Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976) and Watson v. Jones, 80 U.S.(13 Wall.) 679, 20 L.Ed. 666 (1872).

The Sixth Circuit Court of Appeals affirmed, against citing Watson and Serbian Orthodox. Writing for the panel , District Judge Gilmore makes two crucial statements:

First, about the "true nature" of petitioner's claims:

> Appellant is really seeking civil court review of subjective judgments made by religious officials and bodies that he has become "unappointable" due to recurring problems in his relationships with local congregations. This Court cannot constitutionally intervene in such a dispute. (App. A, infra, 5a)

Second - after a review of basically the same authority relied upon by the district court - the following:

> Assuming, without deciding, that review is allowed for

> fraud and collusion, it is still only allowed for fraud or collusion of the most serious nature undermining the very authority of the decision-making body. Certainly there is no claim or showing of such fraud or collusion here. (App. A, infra, 13a)

REASONS FOR GRANTING THE PETITION

This clergy ouster case comes before the Court at a time when a television evangelist is quite seriously being proposed by his adherents as a presidential candidate. The interface in our society between sacred and secular blurs even as courts attempt to guard it. E.g. Lynch v. Donnelly, 465 U.S. 668, 79 L.Ed.2d 604(1985).

This Court should not allow religious bodies and their adherents to be isolated from the secular world by a "wall of deference" imposed by a combination of First Amendment considerations and judicial unwillingness to undertake

adjudication of an admittedly difficult category of cases. Whether they are seen as voluntary associations or as establishments protected by the First Amendment, church bodies function within our society and their members and officers should be subject to the common strictures imposed to punish civil wrongs.

If religious organizations are free to commit tortious acts against their clergy with impunity, the First Amendment ceases to uphold religious freedom and becomes a shield for wrongs that simply should not be tolerated in this society, regardless of the religious or secular affiliation of the perpetrators.

If an ousted clergyman pleads fraud and collusion in a claim against his church and is denied a civil court forum, then the well-known dictum of Justice Brandeis in Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1, 74 L.Ed. 131

(1929) is meaningless. Brandeis recognized that hierarchical church tribunals are entitled to deference, but only "in the absence of fraud, collusion, or arbitrariness." 280 U.S. at 16, 74 L.Ed. at 137. Two circuit cases relied upon by the courts below certainly consider the dictum meaningless. They do so by dismissively characterizing the complaints of ousted clergymen as "ecclesiastical" or dealing with "matters of religion." Simpson v. Wells Lamont Corporation, 494 F.2d 490, 493 (5th Cir. 1974); Kaufmann v. Sheehan, 707 F.2d 355, 359 (8th Cir. 1983).

And yet this Court has recognized in another context that the First Amendment religion clause is Janus-headed. As Justice Roberts stated in Cantwell v. Connecticut, 310 U.S. 296, 303, 84 L.Ed. 1213, 1218 (1939):

> The constitutional inhibition of legislation on the subject of religion has a double aspect. On

> the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship.
>
> ***
>
> On the other hand, it safeguards the free exercise of a chosen form of religion. Thus the Amendment embraces two concepts - freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.

See Serbian Orthodox, supra, 426 U.S. at 734, 49 L.Ed.2d at 177 (Renquist, J. dissenting).

It is respectfully submitted that if the foregoing constitutional analysis is valid, it applies equally to clergy ouster cases. If the ouster process involves fraudulent or collusive activity, its countenance is no less antithetic to our freedoms than the Connecticut statute struck down in Cantwell. Both inhibit the free exercise of religion - the difference is that in Cantwell the exercise took place on the public street and in this

case the inhibition took the form of falsified documents and testimony submitted to church decision-making bodies.

Nor does the Serbian Orthodox case foreclose this position. Justice Brennan clearly leaves the door open by adverting to "marginal civil court review under the narrow rubrics of fraud or collusion when church tribunals act in bad faith for secular purposes." 426 U.S. at 743, 49 L.Ed.2d at 165.

Is there such a thing as "secular scienter?" That is the question to be answered by this Court in this case. The issue in this case was not before the Serbian Orthodox court. But the pregnant dangers of the wall of deference were evident to the dissent:

> If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of arbitrary lawlessness. Serbian

Orthodox, 426 U.S. at 727, 49 L.Ed.2d at 173 (Renquist, J.)

The dissent advocates that court intrusion in a case of this nature follow the path of "neutral principles" of civil law. Clearly, tort law is no less a neutral principle of our civil law than is property or trust law. See, PROSSER AND KEETON ON TORTS (5th Ed. 1984) Chapter 1. The tenor of this reasoning has been adopted by the majority of this Court in Jones v. Wolf, 443 U.S. 595, 61 L.Ed.2d 775 (1979) which held that neutral principles of state property law were to be applied in adjudicating intra-organizational church property disputes.

This reasoning should lead this Court to strike down those decisions which fail to allow ousted clergy to even plead fraud or collusion, and to clarify whether or not the Gonzalez dictum is a mere curiosity in our jurisprudence. Cf. Baugh v. Thomas, 265 A.2d 675, 56 N.J. 203

(1970); and First Baptist Church of Glen Este v. State of Ohio, 591 F.Supp. 676 (S.D.Oh.W.D. 1983).

This petition presents an opportunity for this Court to fashion a rule for dealing with clergy ouster cases other than one which imposes a "secular scienter" fraud and collusion pleading barrier. Such an extreme pleading barrier should be foreign to our civil procedure. Scheuer v. Rhodes, 416 U.S. 232, 40 L.Ed.2d 90 (1974); Conley v. Gibson, 355 U.S. 41, 2 L.Ed.2d 80 (1957).

Although it mischaracterized the true nature of petitioner's claims, the Sixth Circuit was willing to admit in this case that courts should review allegations that the decision making process of church bodies has been tainted with fraud or collusion. (See p.7, supra). That is exactly what petitioner alleges in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THE REV. O. LLOYD HUTCHISON,
Plaintiff-Appellant,

v.

THE REV. JAMES S. THOMAS; THE REV. MERLIN D. VINING; THE REV. THOMAS L. CROMWELL; THE REV. RICHARD L. BURNS and THE EAST OHIO CONFERENCE OF THE UNITED METHODIST CHURCH; THE BOARD OF ORDAINED MINISTRY OF THE EAST OHIO CONFERENCE OF THE UNITED METHODIST CHURCH, and THE JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH,

Defendants-Appellees.

ON APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division

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Decided and Filed April 28, 1986

Before: JONES and WELLFORD, Circuit Judges; and GILMORE, District Judge*.

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*The Hon. Horace W. Gilmore, United States District Judge for the Eastern District of Michigan, sitting by designation.

APPENDIX A

GILMORE, District Judge. This is an action brought by appellant, an ordained Methodist minister, challenging his enforced retirement under Church disciplinary rules. The defendants are a Bishop of the Methodist Church and three of his subordinates, the Judicial Council of the Church, as well as the East Ohio Conference of the Church and the Board of Ordained Ministry of the Conference. The district court dismissed the complaint for lack of subject matter jurisdiction. We affirm.

In his original complaint, appellant raised a number of grievances against defendants, including contentions that defendants had improperly applied provisions of The Discipline of the United Methodist Church (hereinafter "The Discipline"), governing the appointment and placement of ministers, and that defendants had misled and misguided

various units of the denomination in bringing about his early retirement. He further alleged that defendants were guilty of "fraudulent or collusive or arbitrary" action, as well as defamation, intentional infliction of emotional distress, and breach of contract.

On December 5, 1984, appellant filed a proposed amended complaint that added his wife, claimed loss of consortium on her part, and expanded considerably on his earlier claims.

Prior to the filing of this amended complaint, extensive argument on a motion to dismiss had been heard. On December 11, 1984, the district court filed its opinion granting the motion to dismiss for lack of subject matter jurisdiction. The Court additionally dismissed the complaint for noncompliance

with the mandatory requirements of Rules 8(a), 9(b) and 10(b) of the Federal Rules of Civil Procedure.

Appellant's basic claim is that the United Methodist Church wrongfully expelled him from his ministry in the defendant East Ohio Conference by fraudulent or collusive or arbitrary application of the rules, laws and doctrinal statements known as The Discipline. Appellant was forced to retire due to his alleged inability to work with congregations and get along with members. He had been transferred several times. Several hearings were conducted concerning his ability to relate properly to his congregations. After a final determination by the church's highest tribunal, the Judicial Council, he was placed on involuntary retirement. He alleges that throughout these proceedings the Bishop and other parties

misrepresented his relationships at various churches, and through this misrepresentation brought about his enforced retirement.

The crux of appellant's fraud claim is as follows:

> The individual Defendants acted to have Plaintiff declared "unappointable." ...The essence of Plaintiff's claim is that this false characterization of his ministry was carried out through fraud and misrepresentation, and by withholding from the general bodies concerned (the Board of Ordained Ministry, the Annual Conference of the East Ohio Conference of the United Methodist Church, and the Judicial Conference of the United Methodist Church) the true facts surrounding the events of the Plaintiff's ministry.

Appellant's brief p. 7.

Appellant is really seeking civil court review of subjective judgments made by religious officials and bodies that he had become "unappointable" due to recurring problems in his relationship

with local congregations. This Court cannot constitutionally intervene in such a dispute.

The Supreme Court of the United States has steadfastly upheld the First Amendment's command that secular authorities may not interfere with the internal ecclesiastical working and disciplines of religious bodies, although there may be occasions when civil courts can resolve disputes over the disposition and use of church property.

As the Supreme Court of the United States pointed out as early as 1871 in Watson v. Jones, 80 U.S.(13 Wall.) 679:

> ...[W]e think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such

decisions as final, and as binding on them, in their application to the case before them.

Id. at 272.

Further, the Court said:

> In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence

> of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.
>
> Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals...

Id. 728-29.

This doctrine was recently reaffirmed by the Supreme Court in Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976):

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. 724-25.

Simpson v. Wells Lamont Corporation, 494 F.2d 490 (5th Cir. 1974) is similar to the instant case. There an expelled United Methodist minister sought damages and other relief against his bishop and denominational officials. The Fifth Circuit dismissed the action in a strongly worded opinion:

> This case involves the fundamental question of who will preach from the pulpit of a church, and who will occupy the church parsonage. The bare statement of the question should make obvious the lack of jurisdiction of a civil court. The answer to that question must come from the church.

Id. at 492.

Quoting, with approval, from the district court opinion, the court said:

> "[N]o matter how one may look at this dispute, it had to do with the substance and content of the very words uttered within the church itself, going right to the heart of the doctrine and beliefs and types of sermons that are delivered in churches. Now, the church is a sanctuary, if one exists anywhere, immune from the

> rule or subjection to the authority of the civil courts, either state or federal, by virtue of the First Amendment."

Id. 492-93.

Appellant, however, relies on dictum in Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1 (1929), to support his argument that there exists an exception to this general rule of deference where cases involve "fraud, collusion, or arbitrariness," and that this case falls within that exceptions. There, the Court said:

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

Id. at 16.

The Court dealt with this language in Milivojevich, supra, saying:

Gonzalez first adverted to the possibility of "marginal civil court review," ...in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion, or arbitrariness." However, since there was "not even a suggestion that [the Archbishop] exercised his authority [in making the chaplaincy decision] arbitrarily," 280 U.S., at 18, the suggested "fraud, collusion, or arbitrariness" exception to the Watson rule was dictum only. And although references to the suggested exception appear in opinions in cases decided since the Watson rule has been held to be mandated by the First Amendment, no decision of this Court has given concrete content to or applied the "exception." ...

...We have concluded that whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception - in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations - is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or

> ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decision of church tribunals as it finds them.

Id. at 712-13.

It is true that no issue of fraud or collusion was involved in Milivojevich since the only claim was of arbitrariness. Id. at 713 n.7. Nevertheless, the fact remains that the Court has established a firm policy protecting First Amendment rights that prohibits inquiry into ecclesiastical decisions in a hierarchical church, absent the most unusual

circumstances. As pointed out in Ellman, Driven From the Tribunal; Judicial Resolution of Internal Church Disputes, 69 Cal.L.R. 1378, 1987 (1981):

> [T]he only exception to strict deference apparently left open by [Milivojevich] was "marginal review" for fraud or collusion and the possibility of such review was not endorsed, but merely left for later consideration.

This Court finds no basis for intervention in the instant case. There is no showing of such egregious action by the hierarchical authorities of the United Methodist Church to justify court interference, if such interference is even permitted under Milivojevich. Assuming, without deciding, that review is allowed for fraud or collusion, it is still only allowed for fraud or collusion of the most serious nature undermining the very authority of the decision-making body. Certainly there is no claim or showing of fraud or collusion here. And we emphasize

that we do not hold that such great fraud would be a basis for court interference. We merely state that possibility has been left open by the Supreme Court, but further state that there is no showing whatever in this case that such egregious conduct occurred.

Appellant cites as authority for his position Alberts v. Devine, 395 Mass. 59, 479 N.E.2d 113 (1985), cert. denied, 106 S.Ct. 546 (1985). There a Methodist minister brought an action against his psychiatrist and two of his clerical superiors. The minister alleged that his superiors had induced the psychiatrist to disclose confidential information about the minister, and had then used that information to block his reappointment as minister. The court held, among other things, that even if The Discipline or other rule of the Church gave the minister's clerical superiors the right or

duty to seek medical information from his psychiatrist, the First Amendment did not preclude imposition of liability on the superiors, not did it bar judicial inquiry into the church's proceedings culminating in the minister's failure to gain reappointment.

The facts in Alberts are significantly different from the facts in this case, and the case can therefore be distinguished. We do not find the case to be a suitable precedent for the relief sought by appellant here. It involves an entirely different issue with respect to confidentiality between a patient and a psychiatrist. It is possible, in a fact situation such as Alberts, this Court could find jurisdiction, but clearly the case does not provide a basis for jurisdiction here because of the very different factual situation.

Appellant also argues that this case can be decided by application of the "neutral principles" doctrine most recently discussed in Jones v. Wolf, 443 U.S. 595 (1979). That Court expressly noted, however, that the "neutral principles" exception to the usual rule of deference applies only to cases involving disputes over church property. Quoting Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1969), the Court said:

> [T]here are neutral principles of law, developed for us in all property disputes, which can be applied without "establishing" churches to which property is awarded.

Id. at 599 (emphasis added.)

But this case does not involve a dispute over church property. The "neutral principles" doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be. The claim here relates to appellant's status

and employment as a minister of the church. It therefore concerns internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom, and law. See Kaufmann v. Sheehan, 707 F.2d 355, 358 (8th Cir. 1983). The neutral principles doctrine relating to church property is simply not applicable in the instant case.

Numerous other federal courts have found federal subject matter jurisdiction lacking in cases such as this.[1] The Fourth Circuit in Rayburn v. General Conference of Seventh-day Adventists, 772 F.2d 1164 (4th Cir. 1985) recently held that the First Amendment prevented

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[1]See, e.g. Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974); First Baptist Church of Glen Este v. Ohio, 591 F.Supp. 676 (S.D. Ohio 1983); Nunn v. Black, 506 F.Supp. 444 (W.D. Va.), aff'd., 661 F.2d 925 (4th Cir. 1981), cert. denied, 454 U.S. 1146 (1982).

application of Title VII protection to an Associate in Pastoral Care in the Seventh-day Adventist Church:

> The role of an associate in pastoral care is so significant in the expression and realization of Seventh-day Adventist beliefs that state intervention in the appointment process would excessively inhibit religious liberty.

Id. at 1168.

The same reasoning is applicable in the instant case, which involves a church decision on the status of one of its ministers. It is therefore clear that the action of the district court in dismissing the case was proper, and the judgment of the district court is affirmed.[2]

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[2]Appellant's other argument, that the district court erred in relying upon FRCP 8(a), 9(b) and 10(b) without expressly ruling upon appellant's motion to amend his complaint, is moot in light of the affirmance on the constitutional issue, as is the issue of whether there is a cause of action for loss of consortium for appellant's wife.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO. 85-3051

THE REV. O. LLOYD HUTCHISON,
Plaintiff-Appellant,

v.

THE REV. JAMES S. THOMAS, et al.
Defendants-Appellees.

Before: JONES and WELLFORD, Circuit Judges; and GILMORE, District Judge.

J U D G M E N T

ON APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court, if necessary.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

John P. Hehman
Clerk

Issued as Mandate:
May 21, 1986

A true Copy.

COSTS: None

Attest:

Filing fee....$
Printing.....$

George McCarthy
Deputy Clerk

Total.....$

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. C84-2895A

REV. O. LLOYD HUTCHISON

Plaintiff

Judge John M. Manos

v.

REV. JAMES S. THOMAS, et al.,

MEMORANDUM OF OPINION

Defendants

On September 13, 1984, plaintiff, Rev. O. Lloyd Hutchison, filed the above-captioned case against the defendants, Rev. James S. Thomas, Rev. Merlin D. Vining, Rev. Thomas L. Cromwell, Rev. Richard L. Burns, the East Ohio Conference of the United Methodist Church, the Board of Ordained Ministry of the East Ohio Conference of the United Methodist Church, and the Judicial Council of the United Methodist church (Judicial Council). Hutchison alleges that the defendants

wrongfully expelled him from his ministry in the East Ohio Conference. Jurisdiction is invoked under 28 U.S.C. §1332. On November 5, 1984, the Judicial Council filed a motion to dismiss for lack of subject matter jurisdiction. On November 21, 1984, Hutchison filed a "Motion for the Court to Sustain Subject Matter Jurisdiction." For the following reasons, the Judicial Council's motion to dismiss for lack of subject matter jurisdiction is granted.

Hutchison alleges that the "United Methodist Church is a hierarchical church governed by a body of rules, laws and doctrinal statements know as "The Discipline." Complaint at 10. He alleges further that he "has been wrongfully expelled from his ministry in the Defendant EAST OHIO CONFERENCE by the fraudulent or collusive or arbitrary application of The Discipline....Id.

at 14.

The First Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." It is well-settled that civil courts are barred by the First Amendment from determining ecclesiastical questions. Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich, 426 U.S. 694, 96 S.Ct. 2372 (1976); Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 90 S.Ct. 499 S.Ct. 601 (1969); Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 8 S.Ct. 1037 (1960); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143 (1952); Gonzales v. Roman Catholic Archbishop, 280 U.S. 1, 50 S.Ct. (1929); Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1872).

The United States Supreme Court has held that:

> "[T]he rule of action which should govern the civil courts... is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided...the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

Watson, supra, 80 U.S. at 727.

> "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decisions of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence

of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Id. at 728-29.

Gonzales v. Archbishop, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929), applied this principle in a case involving dispute over entitlement to certain income under a will that turned upon an ecclesiastical determination as to whether an individual would be appointed to a chaplaincy in the Roman Catholic Church. The Court, speaking through Mr. Justice Brandeis, observed:

"Because the appointment [to the chaplaincy] is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made

them so by contract or otherwise." Id., at 16, 50 S.Ct. at 7.

Thus, although Watson had left civil courts no role to play in reviewing ecclesiastical decisions during the course of resolving church property disputes, Gonzales first adverted to the possibility of "marginal civil court review," Presbyterian Churgh, sic., v. Hull Church, supra, 393 U.S. at 447, 89 S.Ct. at 605, in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion, or arbitrariness." However, since there was "not even a suggestion that [the Archbishop] exercised his authority [in making the chaplaincy decision] arbitrarily," 280 U.S., at 18, 50 S.Ct., at 8, the suggested "fraud, collusion, or arbitrariness" exception to the Watson rule was dictum only. And although references to the suggested exceptions appear in opinions in cases decided since the Watson rule has been held to be mandated by the First Amendment, no decision of this Court has given concrete content to or applied the "exception."

Milivojevich, supra, 426 U.S. at 711-12, 96 S.Ct. at 2381-82.

"In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the constitution requires that civil courts accept their decisions as binding upon them." Id. 15 724-25, 96 S.Ct. at 2387-88.

Milivojevich did not foreclose "'marginal civil court review' under the narrow rubics, sic., of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes."[1] Id. at

[1]See, e.g., EEOC v. Pacific Press Pub. Ass'n., 482 F. Supp. 1291, 1314 (N.D. Cal. 1979) aff'd, 676 F.2d 1272 (9th Cir. 1981) (discharge of secretary performing secular functions subject to review).

713, 96 S.Ct. at 2382 (emphasis added). In this case, however, Hutchison's "claims relate to his status and employment as a priest, and possibly to other matters of concern with the church and its hierarchy, and go to the heart of internal church discipline, faith, and church organization, all involved with ecclesiastical rule, custom and law." Kaufmann v. Sheehan, 707 F.2d 355, 358 (8th Cir. 1983) (no subject matter jurisdiction). Therefore, this court lacks subject matter jurisdiction over Hutchison's complaint. See id.; Lucas v. Hope, 515 F.2d 234, 236 (5th Cir. 1975), cert. denied, 424 U.S. 907, 96 S.Ct. 1464 (1976); Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974); First Baptist Church of Glen Este v. Ohio, 591 F.Supp. 676 (S.D. Ohio 1983); Nunn v. Black, 506 F.Supp. 444, 448 (W.D. Va.) aff'd, 661 F.2d 925 (4th Cir. 1981), cert. denied,

454 U.S. 1146, 102 S.Ct. 1008 (1982) (First Amendment prohibits judicial resolution of whether church member's expulsion was in accordance with church expulsion procedures); First Presbyterian Church of Schenctady v. United Presbyterian Church, 430 F.Supp. 450, 455, 457 (N.D. N.Y. 1977); 40th Street and Fairmount Avenue Church of God v. Stover, 316 F.Supp. 375, 379 (E.D. Pa. 1970).

Accordingly, the Judicial Council's motion to dismiss for lack of subject matter jurisdiction is granted,[2] and Hutchison's motion is denied.

IT IS SO ORDERED.

John M. Manos
UNITED STATES DISTRICT JUDGE

[2]Additionally, Hutchison's complaint is dismissed for non-compliance with the mandatory requirements of Rules 8(a), 9(b), and 10(b) of the Federal Rules of Civil Procedure. Weinfeld v. Buccaneer Broadcasting, Ltd., 86 F.R.D. 546, 457 (D. Mass. 1980).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

REV. O. LLOYD HUTCHISON	)	CASE NO. C84-2895A
Plaintiff,	)	Judge John M. Manos
v.	)	
REV. JAMES S. THOMAS, et al.	)	ORDER
Defendants.	)	

Pursuant to the Memorandum of Opinion issued in the above-captioned case this date, the Judicial Council's motion to dismiss for lack of subject matter jurisdiction is granted, and Hutchison's motion is denied.

IT IS SO ORDERED.

John M. Manos
UNITED STATES DISTRICT JUDGE

APPENDIX D

Supreme Court, U.S.
FILED
SEP 25 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-299

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

O. LLOYD HUTCHISON,

Petitioner,

v.

JAMES S. THOMAS, ET AL.,

Respondents.

RESPONDENTS' JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

NO. 86-299

O. LLOYD HUTCHISON, PETITIONER

v.

JAMES S. THOMAS, ET AL, RESPONDENTS

RESPONDENT'S JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTERSTATEMENT OF THE CASE

In this unusual proceeding, Petitioner Hutchison, an ordained United Methodist minister, turned to the secular courts for redress of what he termed his wrongful "enforced separation" from active service as a pastor at the hands of his religious superiors.

In his lengthy original Complaint herein, Rev. Hutchison aired a litany of grievances against the respective defendants including the Petitioner's presi-

ding Bishop and the Judicial Council of the United Methodist Church, that denomination's highest judicial tribunal. Included in the Complaint were contentions that defendants had "improperly applied" provisions of United Methodism's Book of Discipline governing the appointment and placement of ministers (original Complaint at par. 14); and that various units of the denomination had been "misled" and "misguided" in bringing about Rev. Hutchison's enforced early retirement (Id. at par. 27). Petitioner further alleged that in the process of all this, defendants were guilty of "fraudulent or collusive or arbitrary" action (Id. at par. 14) as well as defamation (Count IV), intentional infliction of emotional distress (Count VI) and breach of contract (Count VII).

On December 5, 1984, Petitioner Hutchison filed an amended complaint,

repeating, albeit in greater detail, the theories that Rev. Hutchison was a victim of "fraudulent or collusive or arbitrary application of the Discipline of the United Methodist Church" (Amended Complaint at par. 16), that defendants had wrongly evaluated and misrepresented his "appointability" as a minister (Amended Complaint at pars. 46, 50), had failed to deal with Rev. Hutchison in a proper "consultative manner" under the Book of Discipline (Id. at par. 49) had misguided the Church's Judicial Council (Id. at par. 103), and in the process, had deprived him of employment "in violation of the Discipline of the United Methodist Church or the public policy of the State of Ohio." (Id. at par. 111.)

Significantly, Rev. Hutchison also sought in his amended complaint to join as a party-plaintiff, his wife, an Ohio resident, seeking additional damages for

ner alleged "loss of consortium" (Count IX). He asserted that the Court could entertain tnis suit in its amended form, as a matter of "pendent jurisdiction." (Amended Complaint at par. 8) However, the Amended Complaint described co-plaintiff E. Louise Hutchison, as a "citizen of Ohio" (Id. at par. 2), the same domicile as a number of the defendants in this diversity action. (Id. at pars. 3, 5)

Respondents moved to dismiss on the theory that the civil courts have no subject matter jurisdiction of an essentially religious controversy involving clergy selection or retention. Tney also pointed out that the Amended Complaint, on its face, had destroyed the diversity jurisdiction of the Court under 28 U.S.C., Section 1332(a). On December 11, 1984, the District Court filed its Memorandum of Opinion granting tne motion of

the Judicial Council on benalf of all defendants to dismiss the action for want of subject matter jurisdiction. The Court noted, additionally, that the original Complaint failed to comply with the pleading requirements of Rules 8(a), 9(b) and 10(b), Fed.R.Civ.P., and was dismissed for that reason as well. (Unpublished Slip Opinion at 4, n. 2) While the District Court did not comment specifically on Rev. Hutchison's attempted amendment and joinder of his wife as a co-plaintiff, the effect of its decision was to reject, sub silentio, that amendment.

The Sixth Circuit affirmed in an opinion filed April 28, 1986, Hutchison v. Thomas, et al., 789 F.2d 392 (6th Cir., 1986). It reasoned that First Amendment principles dictated application of the "rule of deference" since there was no adequate showing in the pleadings

of fraud or collusion of a nature which would "undermine the very authority of the decision-making body." It thus rejected Petitioner's request that it intervene on the basis of the so-called "fraud exception" found in dictum in this Court's decision in Gonzales v. Roman Catholic Archbishop, 280 U.S. 1, 16 (1929), 789 F.2d at 395.

In view of its decision on federal constitutional grounds, the Sixth Circuit did not address Respondents' contention that Rev. Hutchison's amended complaint destroyed the Court's diversity jurisdiction. Nor did it find it necessary to deal with Respondents' other challenges to the adequacy of Hutchison's pleadings. 789 F.2d at 396, n. 2.

SUMMARY OF ARGUMENT

This case is a dispute over subjective judgments made by officials of a religious denomination relative to the

fitness of a clergy-person to continue in religious ministry. As such, it is beyond the jurisdiction of civil courts. Assuming that the so-called "Gonzales fraud exception" permitting limited civil court intervention in religious disputes has any vitality at all as this time, this is not an appropriate case for its application. Nor do "neutral principles" of law utilized by this Court for resolution of church property disputes have any application to controversies involving clergy selection and discipline.

REASONS FOR DENYING THE WRIT

As should be apparent from a reading of the original and Amended Complaints herein, the basic objective of this suit is to draw the secular courts into a dispute between a clergyman and his religious superiors over the adequacy of the former's service as a minister of the

Gospel. This issue was decided adversely to Rev. Hutchison by a number of religious units including the annual conference composed of all of Rev. Hutchison's clergy peers. This decision was also upheld by the Judicial Council which is, in effect, the "Supreme Court" of United Methodism. (Ex. B to Defendants' Memorandum in Support of Motion to Dismiss Complaint.)

Rev. Hutchison opened his brief in the Court below with the following disclaimer:

> "No specific religious doctrine or precept of the United Methodist Church is in any way relevant to this litigation."
>
> Appellant's Brief before Sixth Circuit at 2.

Rev. Hutchison's own pleadings, however, negate the disclaimer. A centerpiece of the Amended Complaint is the allegation that:

"At all relevant times the Plaintiff has acted according to the Discipline of the United Methodist Church."

Amended Complaint at par. 14.

It is pertinent to ask how this Court could adjudicate the above claim of adherence to the Discipline without wading into a dismal swamp of ecclesiastical tenets and precepts.[1/] The impropriety of the task which Rev. Hutchison sought to place before the federal judiciary is made even clearer by considering the striking forms of relief which he has requested in his original and Amended Complaints. The civil courts are requested to enter orders:

"Directing ... BISHOP THOMAS ... to show cause why plaintiff should

---

1/ Cf. Prof. Chaffee, The Internal Affairs of Associations Not-For-Profit, 43 Harv.L.Rev. 993, 1021 (1930).

> not be restored to the appointive process under the Discipline ... and thereby declared 'appointable' and in good standing therein ...."
>
> and
>
> "Directing the defendant EAST OHIO CONFERENCE to ... certify him ... as an 'appointable minister' under the Discipline ..."
>
> and
>
> "... vacating as null, void and tainted with fraud ... the proceedings of the defendant, JUDICIAL COUNCIL, regarding Decision 522 and its subsequent refusal to rehear said decision." (Emphasis added)
>
> Demands for Relief at p. 12, Original Complaint, page 28, Amended Complaint.

It is important to scrutinize the nature of the "fraud" of which Respondents stand accused; particularly so in light of the repeated references to "falsified documents" in the Petition for Writ of Certiorari," darkly implying some unspecified alteration or forgery of Respondents' paperwork or records. In actuality, the pleadings and attachments

negate the existence of such misconduct. "Falsified documents" is merely Petitioner's way of describing documents containing conclusions about his fitness as a pastor with which he does not agree. The true nature of this "fraud" case, as illustrated by Rev. Hutchison's own words, is as follows:

> "The individual defendants acted to have the plaintiff declared 'unappointable.' ... The essence of plaintiff's claim is that this false characterization of his ministry was carried out through fraud and misrepresentation ...." (Emphasis added)
>
> Appellant's Brief before Sixth Circuit at 7.

In short, this suit, though larded with verbiage about "falsified documents" and "wilfull", "wanton", "fraudulent", "conspiratorial", "malicious" and "outrageous" conduct, is in reality, a quest for civil review of subjective judgments made by religious officials and units that a minister had become "unappoint-

able" due to recurring problems in his relationships with local United Methodist congregations. The Sixth Circuit correctly recognized this.

Should any further examples of this point be needed, they are found in abundance in the Amended Complaint. For example, the civil courts are being asked to revisit the following matters:

(a) What was the real "consensus of opinion" concerning Rev. Hutchison's competence within the Pastor-Parish Relations Committee of the Minerva Congregation during the years 1976 through 1979? (Amended Complaint at pars. 26, 29)

(b) Was such committee really "unanimous" in its opposition to Rev. Hutchison's continued service as pastor at Minerva? (Id. at par. 31)

(c) Did Bishop Thomas and defendant Vining fail to "obey the wishes" of the Tiffin Congregation's Pastor-Parish

Relations Committee and thereby violate the consultative provisions of the Discipline? (Id. at par. 48)

(d) Was the meeting between Rev. Hutchison and the Bishop of March 14, 1980 in the nature of a confidential parishioner/pastor discussion or did its subject matter (placement of a new minister) inherently necessitate disclosure by the Bishop to his cabinet? (Id. at pars. 53, 58)

(e) Did the entire Annual Conference, composed of several hundred delegates from churches in the East Ohio area, err in concluding on two occasions (1981 and 1982) that Hutchison was "unappointable" to the pulpit of a United Methodist congregation? (Id. at par. 73)

(f) Was the entire Judicial Council "misguided" in its conclusion (Decision No. 522) that Rev. Hutchison could properly be involuntarily retired under the Discipline? (Id. at par. 27)

(g) Did Rev. Hutchison ask, or did he not ask, his Bishop to transfer him from Minerva Church to another congregation? On this point, Petitioner attached to his complaint a stenographic transcript of a colloquy between himself and Respondent Bishop as follows:

> BISHOP THOMAS: ... my point is that you requested a move. That elicited this letter [from Petitioner dated March 13, 1980]. That's the only point I'm making."
>
> "REVEREND HUTCHISON: I requested to be considered for a move." (Emphasis added)
>
> Joint Appendix below at F-2, pg. 57.

How this material can fairly be said to support a fraud case is difficult to discern. At best, it reveals a tendency by Petitioner to equivocate or "split hairs" over semantic differences with his superiors.

A. Civil Courts Will Not Review Decisions Of Religious Tribunals On Matters Purely Ecclesiastical Such As Internal Church Government And The Qualifications Of Clergy.

While there are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property (Jones v. Wolf, 443 U.S. 595 (1979)), they have steadfastly upheld the First Amendment's command that secular authorities may not interfere with the internal ecclesiastical workings and discipline of religious bodies. Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1871); Bouldin v. Alexander, 15 Wall 131, 21 L.Ed. 69 (1872); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 97 L.Ed. 120 (1952); Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 49 L.Ed.2d 151 (1976); and Simpson v. Wells-Lamont Corporation, 494 F.2d 490 (5th Cir., 1974).

In Serbian, supra, this Honorable Court reversed a state supreme court which had overruled as "arbitrary" a religious tribunal's decision to defrock one of its bishops. This Court summarized its holding in clear and unequivocal terms:

> "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them."
>
> (49 L.Ed.2d at 171)

In affirming the District Court's dismissal of Rev. Hutchison's suit, the Sixth Circuit was faithful to this Court's teachings and the unbroken line of authorities cited above. To the extent that Rev. Hutchison contends that

clergy selection matters may be treated differently than matters of doctrine and faith, he misapprehends the scope of the First Amendment's guarantees. Such guarantees extend to

> "The power [of churches] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." (Emphasis added)
>
> Kedroff v. St. Nicholas Cathedral, supra, 344 U.S. at 119, 97 L.Ed. at 138

In Serbian, supra, the Supreme Court reconfirmed that the scope of religious freedoms is not merely limited to teachings and beliefs, but also, to internal organization and governance:

> "Nor is there any dispute that questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern...."
>
> 426 U.S. at 717; 49 L.Ed.2d at 167

In Simpson v. Wells-Lamont Corporation, et al., supra, 494 F.2d 490 (5th Cir., 1974), the Fifth Circuit upheld the dismissal of a suit brought by an expelled United Methodist minister who sought damages and other relief against his bishop and other denominational officials and units. The Fifth Circuit said:

> "This case involves the fundamental question of who will preach from the pulpit of the church, and who will occupy the church parsonage. The bare statement of the question should make obvious the lack of jurisdiction of a civil court. The answer to that question must come from the church." (Emphasis added)
>
> * * * *
>
> "The interaction between the church and its pastor is an integral part of church government."
>
> 494 F.2d at 492, 493

To the same effect, see the cases of Kaufmann v. Sheehan, 707 F.2d 355, 358 (8th Cir., 1983) and Nunn v. Black, 506 F.Supp. 444, 448 (W.D.Va., 1981).

In the instant case, Petitioner Hutchison asks this Court to intervene in a dispute finally decided by United Methodism's highest judicial tribunal, to review the work product of that tribunal, and to "vacate" its decision. He also asks the Court to search the record of scores of committee and cabinet meetings as well as sessions of the full Annual Conference and to make its own judgment as to whether he is fit for active service as a United Methodist minister. As in Simpson, supra, the bare statement of the question should make obvious the lack of civil jurisdiction over such an undertaking. Practical considerations as well as constitutional commands dictate that courts cannot be and should not become the forum to redress grievances surrounding the assignment of clergy within a religious system.

B. If The So-Called Gonzales "Fraud Exception" Has Any Validity At All, This Is Not A Case For Its Application.

The linchpin of Petitioner's position is Justice Brandeis' dictum in Gonzales v. Archbishop, 280 U.S. 1, 16, 74 L.Ed. 131 (1929), creating a so-called "fraud exception" to the otherwise inflexible command that secular courts defer to church tribunals on matters purely ecclesiastical. (280 U.S. at 16) However, since the time of Gonzales, very little, if any, life has been breathed into this exception. It is submitted that this Court's Serbian decision, supra, all but eliminated the exception, implying that it would take an extraordinary fraud case indeed to warrant even "marginal" review by a civil court. (426 U.S. at 711-12)

After substantial research, we are aware of no case in which a federal court has utilized the "Gonzales exception" to

review a disciplinary decision by a major denomination's highest tribunal dealing with the status of one of its pastors. Whatever may be the ultimate fate of Gonzales, we submit this is not the time or the correct setting for this Court to activate the "fraud exception." As the Sixth Circuit wisely recognized, this is essentially a dispute over subjective judgments within a religious organization. No egregious conduct is evident, even if the pleadings are given a strict and literal reading.

Finally, on the question of the applicability of Gonzales, we urge this Court to uphold the sound approach followed by the Eighth Circuit in Kaufmann v. Sheehan, supra. There, the Court refused jurisdiction over the suit of a defrocked Catholic priest, even though the Court conceded that his complaint "might arguably state a claim for fraud

or collusion" and that Gonzales "suggested a possible exception to the Watson [deference] rule." 707 F.2d at 358. Notwithstanding these considerations, the Eighth Circuit recognized the distinction between the "religious" and "secular" acts of a church defendant, noting that Serbian did not foreclose "marginal civil court review under the narrow rubrics of 'fraud or collusion when church tribunals act in bad faith for secular purposes.'" (Emphasis added) In other words, the Court not only specified that there must be a clear showing of fraud, but also, that the fraud be a means to the achievement of a secular end.

The Court concluded its analysis by observing that the status of a clergy person goes to the heart of internal religious organizations -- a uniquely religious, non-secular concern. Hence, Gonzales has no application:

> "It is apparent that a priest or other member of the clergy occupies a particularly sensitive role in any church organization. Significant responsibility in matters of the faith and direct contact with members of the church body with respect to matters of faith and exercise of religion characterize such positions."
>
> 707 F.2d at 359

So, too, is this the case in the proceeding at hand. Rev. Hutchison's status as a pastor is a matter of religion -- not of secular employment and, consequently, Gonzales cannot apply.

The importance of the rule of deference in a religious setting is manifest. The very existence of a church can ultimately turn upon its ability to freely choose who will preach its values. That choice must remain unfettered by judicial oversight or it will become a self-conscious and inhibited one.

C. This Dispute, As Framed In The Pleadings Of Petitioner, Is Not Susceptible To A "Neutral Principles" Analysis.

Rev. Hutchison argues (Petition at 13) that the courts have overlooked a clear path to the proper resolution of this case, namely, the "neutral principles" doctrine most recently discussed in Jones v. Wolf, 443 U.S. 595, 61 L.Ed.2d 775 (1979). We suggest that it is plaintiff who has overlooked the true meaning of Jones and other decisions dealing with "neutral principles."

First, as the Sixth Circuit recognized, 789 F.2d at 396, Jones and its predecessors have limited the use of the "neutral principles" doctrine to religious property dispute cases.

Second, the fact that this Court has not extended the "neutral principles" doctrine to other kinds of religious controversies in the areas of church

government, order and discipline is not mere happenstance. Property matters, unlike church discipline and order, are inherently secular. (See, for example, Ellman, Driven From The Tribunal: Judicial Resolution of Internal Church Disputes, 69 Cal.L.Rev., 1378 where property is seen as "distinctly secular.") Deeds, charters, trust clauses and the like are often readily available to afford an opportunity for "neutral" analysis in church property cases. By contrast, relations of clergy with their churches involve a heavy overlay of subjective judgment, colored by doctrine, faith and religious tradition. Governing provisions of ecclesiastical law generally are not stated in religiously neutral terms as are deeds and charters.

In sum, the "neutral principles" approach is not workable in the present framework. Even assuming, arguendo, that

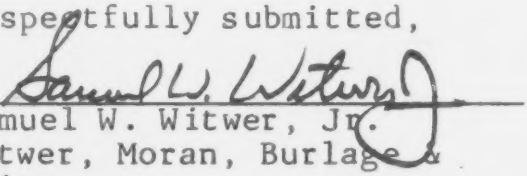
such approach may theoretically be extended beyond the property realm, Rev. Hutchison has failed to point to a single document or disciplinary provision which would be truly "neutral" and devoid of religious content, thus affording this Court a constitutionally acceptable basis for dealing with the matters here in dispute. Instead, his pleadings graphically demonstrate that he is beckoning to the Court to enter the "dismal swamp" forbidden by the First Amendment.

CONCLUSION

Petitioner has stated no cause of action, either in his Complaint or in his Amended Complaint over which a civil court has subject-matter jurisdiction. To the contrary, the controversy attempted to be brought before this Court is an issue wholly outside the province of this or any Court. Settled principles of

deference and abstention under the First Amendment require that the actions of the courts below in refusing to become embroiled in this religious dispute be affirmed. Accordingly, the Petition for Writ of Certiorari must be denied.

Respectfully submitted,



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